(98)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

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**Single Bench : Hon'ble Shri H.L. Dattu, CJ.**

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**Writ Petition No. 3838 OF 1989.**

**Petitioner** Surajmal, S/o. Musaddilal Agrawal, aged about 68 years, occupation cultivator, resident of Ramadheen Marg, Rajnandgaon.

Vs.

**Respondents:**

1. Food Corporation of India, Rajnandgaon.
2. State of M.P. Through Chief Secretary, Bhopal.
3. Collector, Rajnandgaon.
4. Board of Revenue, M.P. Gwalior.

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**Present:** Shri P. Diwakar, Sr. Advocate with Shri P.K. Bhaduri, counsel for the petitioner.
Shri B.P. Sharma, counsel for respondents No.1 and 2.

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**ORAL ORDER**
**(Passed on 28th March, 2007)**

The petitioner claims that he is the owner of the agricultural land bearing Khasra No.72/3 situates in Lakholi Village, Rajnandgaon District.

(2) The State Government has acquired the land in Khasra No.133 situates in Lakholi Village and beneficiary of such acquisition is the Food Corporation of India. After acquisition of the land, the State Government has handed over the same to Food Corporation of India for its use. The Food Corporation of India in order to protect its property has erected a compound wall.

(3) Since the Corporation Authorities did not consider the request made by the petitioner for right of passage to go to the land in Khasra No.72/3, he has approached the Revenue Authorities to remove the obstruction. The Revenue authorities by invoking the provisions of Section

133 of the Chhattisgarh Land Revenue Code, 1959 ("the Code" for short) had directed the Food Corporation of India to remove the obstruction caused to the petitioner for using his land in Khasra No.72/3. Aggrieved by those directions, the Corporation had carried the matter before the Board of Revenue, Madhya Pradesh, Gwalior. The Board of Revenue has come to the conclusion that the authorities under the Code could not have invoked their power under Section 133 of the Code and directed the Corporation to remove the obstruction said to have been caused to the petitioner for using his land in Khasra No.72/3 and, accordingly, has set aside the order passed by the Authorities under the Code. Aggrieved by the order so passed by the Board of Revenue dated 09.03.1989, the owner of Khasra No.72/3 is before me in this writ petition.

(4) Shri P. Diwakar, learned Sr. Counsel appearing for the petitioner would submit that the Board of Revenue is not justified in coming to the conclusion that the authorities under Revenue Code could not have invoked the provisions under Section 133 of the Code.

(5) *Per contra*, learned counsel appearing for Food Corporation of India justifies the orders passed by the Board of Revenue.

(6) The State Government has acquired the land in Khasra No.133 for the benefit and use of Food Corporation of India. The land in Khasra No.134 is adjacent to land in Khasra No.133 and the land in Khrasra No.134 is a Government land. The petitioner was using the land in Khasra No.134 to go to his land in Khasra No.72/3. The Food Corporation of India after taking possession of the land in Khasra No.133, in order to protect its interest in the land constructed a compound wall and thereby the petitioner was not in a position to make use of his land in Khasra No.72/3. If there was an obstruction of the right of passage, as envisaged under sub-Section (2) of Section 131 of

the Code, the petitioner should have filed appropriate civil suit and could not have gone before the authorities under the Code.

(7) Even otherwise, Section 133 of the Code speaks of the removal of obstruction of passage by Tahsildar, if any obstruction impedes the free use of a recognized road, path or common land of a village or impedes the road or water course or source of water which has been the subject matter of a decision under Section 131 of the Code, the Tahsildar may direct the person responsible for such obstruction to remove it and if such person fails to comply with the order, he may cause the obstacle to be removed and may recover from such person the cost of removal thereof.

(8) The provision of Section 133 of the Code can be pressed into service only, if the Tahsildar after local enquiry has decided the matter with reference to the previous custom~~s~~ may be on a request made by the petitioner. In the instant case, such an enquiry has not been held by the Tahsildar nor any order is passed in this regard. Therefore, the officers functioning under the Code could not have directed the Tahsildar to invoke his powers under Section 133 of the Code to remove the obstruction said to have been caused by contesting respondent on the passage to his lands.

(9) In view of the above discussion, I am of the opinion that the Board of Revenue is justified in observing that the Authorities under the Code could not have directed the Food Corporation of India to remove the so-called obstruction by invoking the provisions of Section 133 of the Code. Accordingly, the petition requires to be rejected and it is rejected. However, the petitioner is at liberty to approach the Civil Court for appropriate relief subject to the provisions of the Limitation Act. Ordered accordingly.

**Sd/-**
**Chief Justice**